

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.2177 OF 1985

Bank of India .. Plaintiffs

Vs.

M/s. Ramniklal Traders & Ors. .. Defendants

Mr.K.H.Modi i/b Little & Co. for the plaintiff

Ms.Asha M.Bhambwani i/b M.Shah & Co.for the
defendant no.1 to 3

CORAM : S.U.KAMDAR, J

DATED : 27TH JUNE, 2005

P.C.:

. Compilation of documents are marked as
Exhibit P1 to P7.

Evidence of P.W.No.1

Full Name : Bhaskar Dhakate

Age : 39 years Occupation: Bank Officer

Resi Address : 131, Kalpatru Garden,
Star Residency,
Ashok Nagar, Kandivli (E),
Mumbai

**Cross-examination by Ms.Asha M.Bhambwani on behalf
of the defendants**

1. I am working in Woodhouse Road Branch,

Colaba of the plaintiff bank. I am deposing on the basis of available records of the plaintiff bank. I was not working in this branch at the time when the suit transaction took place. (Witness shown verification clause of the plaint) The person who has verified the plaint has been transferred to some other branches of the plaintiff bank. I am aware of the correspondence exchanged between the parties and the bills of exchange on the basis of records available. I am not aware what were the facilities available to Trison Chloro Organic Industries. I have not studied the records of the case and therefore, I am not aware of the facts of the case.

Cross-examination: concluded

Re-examination: Nil

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The following issues are added to the issues
dt.20.06.2005:

1. Whether the suit is bad in law as non joinder
of M/s.Trison Chloro Organic Industries being the
drawers of the Bill of Exchange?

2. Whether the Defendant have agreement with
the Drawer as "Bills subject to approval of the
goods by the buyer" is valid"

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1. The present suit has been filed by the plaintiff for the recovery of sum of Rs.2,64,962.50 @ 6% p.a. Suit is filed against the defendant on the basis of acceptance of the bill of exchange.

2. In the written statement the defendants have contended that the defendants are discharged because the said five bills of exchanges were duly secured by the drawers interalia by executing

various letters of liens authorising the plaintiffs to appropriate the proceeds of various securities and receipts towards the amounts due under the said bill of exchange. It is also mentioned that under the said bill of exchange only drawers are liable as the drawers are availed of the said facilities from the plaintiff. It has been mentioned in the said written statement that acceptance by the defendant was conditional acceptance and the plaintiff was aware of the same because alongwith bill of exchange of the documents pertaining to the sale transaction for the goods sold and delivered were filed.

3. It is the case of the defendant that the goods were returned as the same were not of prescribed quality and therefore, they were not liable to make payment of any bills of exchange. Plaintiff has filed Exh. P1 to P7 being the compilation of documents for the purpose of proving their case. Plaintiff has also filed affidavit of evidence of one Mr. Bhaskar Dhakate. In the cross-examination, the said witness has deposed that he is not aware of any of the facts of the

case nor he has seen the records before filing his affidavit of evidence. He has deposed that he is unable to answer any of the questions in the cross-examination. In view thereof, it is clear that the affidavit of evidence filed by the plaintiff is totally false and is not deposing the true facts even as exist in the record. In view thereof, evidence of such a witness cannot be taken into consideration. Plaintiffs have not produced any other witness. The examination-in-chief of the witness by way of affidavit has to be discarded in view of this statement in cross-examination that he is not aware of any facts of the case and he has not even seen the record. Plaintiff has failed to prove their case.

4. In view thereof, suit is dismissed. Plaintiff is directed to pay cost of the suit to the defendant quantified at Rs.15,000/-. In view of the dismissal of the suit, defendant will be entitled to withdraw the amount deposited by them at the stage of hearing of the Summons for Judgment along with interest accrued thereon. Prothonotary & Senior Master, High Court, Mumbai is directed to

release the amount to the defendant. Mr.Modi the learned counsel for the plaintiff seeks stay of the order. Application rejected.